

O'CONNOR & MIKHOV LLP

Mark O'Connor (SBN 157680)

Steve Mikhov (SBN 224676)

Alastair F. Hamblin (SBN 282044)

1801 Century Park East, Suite 2300

Los Angeles, CA 90067

Telephone: (310) 552-2250

Fax: (310) 552-7973

Attorneys for Plaintiff,

CHRISTEL MARCUS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE: VOLKSWAGEN "CLEAN
DIESEL" MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION**

Case No.: 3:15-md-02672-CRB

(Removed from Superior Court of
California, County of Santa Clara,
Case No. 16cv298538)

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
REMAND TO SUPERIOR
COURT OF CALIFORNIA AND
AWARD OF COSTS AND
EXPENSES RESULTING FROM
REMOVAL**

This Document Relates to:

***Christel Marcus v. Volkswagen Group
of America, Inc., et al., Case No. ED
CV 16-5307-DOC (SPx) (C.D. Cal.
2016)***

*Assigned for All Purposes to the
Honorable Charles R. Breyer*

Action Filed: August 15, 2016
Trial Date: Not Set

1 **TO THE COURT AND ALL PARTIES AND COUNSEL OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that Plaintiff Christel Marcus hereby moves this
4 Honorable Court for an order remanding the instant action to the Superior Court of
5 California, County of Santa Clara, and awarding Plaintiff costs and expenses
6 incurred as a result of removal, to be heard at a date and time determined by the
7 Court, in the United States District Court for the Northern District of California,
8 Courtroom 6, before the Honorable Judge Charles R. Breyer. The Court is located
9 at 450 Golden Gate Ave., San Francisco CA 94102.

10 Pursuant to the Court's Pre-Trial Order No. 22, Plaintiff will set forth the
11 points and authorities in support of this motion pursuant to the briefing schedule for
12 motions to remand, to be set by the Court. Moreover, Plaintiff respectfully requests
13 that this Court set a schedule for briefing motions to remand now that the date of the
14 final hearing has passed.

15 This motion is brought pursuant to 28 U.S.C. §§ 1446(c), 1447(c) and other
16 relevant federal law. The factual basis for this motion is that Defendant FCA US,
17 LLC's removal from state court was defective and improper because Defendant
18 failed to properly establish federal subject matter jurisdiction. Neither a federal
19 question nor diversity jurisdiction exist on the face of Plaintiff's well pleaded
20 complaint. Further, Defendant was aware that there was no basis for federal subject
21 matter jurisdiction at the time of removal. As such, Plaintiff is also entitled to an
22 award of costs and expenses pursuant to 28 U.S.C. § 1447(c). Based thereon,
23 Plaintiff requests that the Court award them costs and expenses, including attorney's
24 fees incurred as a result of the removal.

25 ///

26 ///

27 ///

1 This motion is based upon this Notice of Motion, and the Memorandum of
2 Points and Authorities and supporting documents to be filed pursuant to the court's
3 briefing schedule, the Court's file in this matter and upon all evidence and arguments
4 that may be presented at the hearing on this matter.

5
6 Dated: January 12, 2017

O'CONNOR & MIKHOV LLP

/s/ Alastair F. Hamblin

Mark O'Connor (SBN 157680)

Steve Mikhov (SBN 224676)

Alastair F. Hamblin (SBN 282044)

Attorneys for Plaintiff,
CHRISTEL MARCUS